

REMARKS

Claims 34 and 35 have been added, and therefore claims 14 to 35 are pending in the present application.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 14 to 28 were rejected under 35 U.S.C. § 103(a) as obvious over German Patent No. DE 10153484 (the “Gilge” reference) in view of Local Area Networks Architectures and Implementations (the “Martin” reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 14, as presented, is to *an evaluation device configured to analyze output of at least a subset of the signal processors, the evaluation device and the at least a subset of the signal processors each forming a direct link to one of a central hub, a switch and a port, of a network having a star-shaped topology.*

The Office Action has asserted the rationale of applying a “known” technique to a “known” device ready for improvement to yield predictable results. To rely on this rationale, the Office must articulate the following: (1) a finding that the prior art contained a “base” device (method, or product) upon which the claimed invention can be seen as an “improvement”; (2) a finding that the prior art contained a known technique that is applicable to the base device (method, or product); (3) a finding that one of ordinary skill in the art would have recognized that applying the known technique would have yielded predictable results and resulted in an improved system; and (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness. M.P.E.P. § 2143. As explained below, the present rejections do not articulate the foregoing as required by the Office.

As to item (1), the Office Action conclusorily suggests that the system of the “Gilge” reference already contains a star network, in which the evaluation device is the central point. This assertion is apparently based on the assumption that the evaluation device constitutes a “controlling node.” Even if the evaluation device communicates with the signal processors and an external network, there is no indication that the evaluation device controls data traffic. Rather, it appears that the evaluation device passively responds to input from those components to which it is connected. The evaluation device therefore apparently exerts the control necessary to constitute a “controlling node,” so that the “Gilge” system is not a star network, as provided for in the context of the presently claimed subject matter.

As to item (2) (as to whether the Ethernet techniques of the “Martin” reference are applicable to the “Gilge” system), the Office apparently and conveniently includes (without reason) various networking features into the “Gilge” system, such as evaluating data, balancing network traffic, recording network data, performing network error checking and correction, and adapting to increased workload from additional device. Although these features are clearly absent from the “Gilge” system, the Office conclusorily asserts that it is conventional with networks (like the “Gilge” system) to include these features. The Office also assumes that the evaluation device necessarily implements these features. As explained above, the evaluation device is not a controlling node. The mere fact that the evaluation device communicates with an external network is wholly insufficient to conclude that the system as a whole is itself a network formed around the evaluation device, as with the claimed subject matter.

As to item (3), it is respectfully submitted that one of ordinary skill in the art would not have recognized a need for the networking features described above. The Office Action conclusorily asserts that the benefits of applying Ethernet techniques to the “Gilge” system would be recognized as predictable, but the asserted reasons are wholly based on hindsight. The Office has not asserted that the asserted disadvantages of the “Gilge” system (e.g., costs of paying staff to program, construct, and support appropriate unique network systems, costs to test software and hardware for reliability and costs to balance and rebalance workload) would be recognized at the time of the applied references. Instead, the Office appears to suggest that the authors of the “Gilge” reference necessarily had the foresight to create a system that would be amenable to modification in view of later realized needs.

Additionally, the Office has not explained why it would be obvious to apply the Ethernet techniques of the “Martin” reference to arrive at the specific configuration of the present application, as presented in the claims (e.g., a configuration in which the evaluation device would form a direct link to the hub/switch). The “Martin” reference does not disclose how to modify an existing system to implement a star network. For instance, the “Martin” reference does not address the situation of substituting a central switch for an existing component, and it also does not indicate how to connect the existing component relative to the central switch after substitution is performed. Thus, the combination of the applied references would not enable one of ordinary skill in the art to arrive at the presently claimed subject matter.

Based on these reasons, it is respectfully submitted that the “Martin” reference does not cure the deficiencies of the primary “Gilge” reference, so that one skilled in the art would not be motivated to combine these references.

For at least the above reasons, claim 14, as presented, is allowable, as are its dependent claims 15 to 28.

Claims 29 to 33 were rejected under 35 U.S.C. § 103(a) as obvious over the “Gilge” reference in view of the “Martin” reference and U.S. Patent Application Pub. No. 2004/0264493 (the “Han” reference).

Claims 29 to 33 depend from claim 14 and they are therefore allowable for the same reasons, since the “Han” reference does not cure – and has not been asserted to cure – the

critical deficiencies of the “Gilge” and “Martin” references as to claim 14. Additionally, claims 29 and 30, as presented, respectively include the features in which “*the plurality of signal processors are configured to communicate with one another in full duplex mode*” and in which “*at least a subset of the plurality of signal processors is assigned a specific bandwidth.*” Although the Office conclusorily asserts that full duplex communication and assigning of bandwidth are somehow provided by the “Han” reference, no reasons are provided as to why it would be obvious to implement these features with the “Gilge” system.

As further regards, claim 31, as presented, it includes the features in which “*a first one of the at least two of the plurality of signal processors is configured to perform a compression of a signal received from the signal source, and a second one of the at least two of the plurality of signal processors is configured to perform an analysis of the signal received from the signal source.*” None of the applied references discloses a first processor for compression of a signal and a second processor for analysis of the same signal, as provided for in the context of the presently claimed subject matter. Accordingly, claims 29 to 31 are allowable for these additional reasons.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

New claims 34 and 35 do not add any new matter and are supported by the present application. Each of claims 34 and 35 includes features like allowable claim 14. They also provide further features that are not disclosed or suggested by the applied references, as any review of the applied references makes plain, and they are therefore allowable for these further reasons.

In sum, claims 14 to 35 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of presently pending claims 14 to 35 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

Dated: 12/2/2009

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